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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RUBEN ROMERO and SARAH YAHN, on behalf of
 themselves and all others similarly situated,

Plaintiffs,

vs.

FIDELITY NATIONAL FINANCIAL, INC.,
 FIDELITY NATIONAL TITLE INSURANCE
 COMPANY, TICOR TITLE INSURANCE
 COMPANY, TICOR TITLE INSURANCE
 COMPANY OF FLORIDA, CHICAGO TITLE
 INSURANCE COMPANY, NATIONAL TITLE
 INSURANCE COMPANY OF NEW YORK, INC.,
 SECURITY UNION TITLE INSURANCE
 COMPANY, THE FIRST AMERICAN
 CORPORATION, FIRST AMERICAN TITLE
 INSURANCE COMPANY, UNITED GENERAL
 TITLE INSURANCE COMPANY, LANDAMERICA
 FINANCIAL GROUP, INC., COMMONWEALTH
 LAND TITLE INSURANCE COMPANY,
 LAWYERS TITLE INSURANCE CORPORATION,
 TRANSNATION TITLE INSURANCE COMPANY,
 STEWART TITLE GUARANTY COMPANY,
 STEWART TITLE INSURANCE COMPANY, OLD
 REPUBLIC NATIONAL TITLE INSURANCE
 COMPANY, and OLD REPUBLIC
 INTERNATIONAL CORPORATION,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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 NORTHERN DISTRICT OF CALIFORNIA
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1 Plaintiffs Ruben Romero and Sarah Yahn, on behalf of themselves and all others similarly
2 situated, allege as follows:

3 INTRODUCTION

4 1. Plaintiffs bring this antitrust action on behalf of all persons and entities who purchased
5 title insurance in the State of California directly from the named defendants or any co-conspirator as
6 identified in this Complaint.

7 2. Title insurance is one of the most costly items associated with a real estate purchase,
8 aside from the purchase price of the property. In 2005, the price of title insurance for residential
9 properties ranged from approximately \$1,010 (for a \$250,000 property) to \$1,490 (for a \$500,000).
10 Title insurance premiums for more expensive homes and commercial properties are significantly
11 higher.

12 3. Title insurance differs from other kinds of insurance in three respects. First, unlike
13 automobile, life, homeowners or other forms of insurance, which protect consumers from loss
14 resulting from an event that may occur in the future, title insurance offers protection from events that
15 occurred in the past that may affect the title to the property. Second, unlike other forms of insurance,
16 in which coverage may vary, most title insurance policies are based on a single set of form policies,
17 published by the American Land Title Association, and provide substantially the same protection.
18 Third, unlike other forms of insurance, title companies do not market their products directly to the
19 consumers who pay for them. Instead, title insurers rely on "reverse competition" to market and sell
20 their products. They pay commissions, kick-backs or referral fees, or provide other inducements to
21 real estate agents, banks, lenders, builders and others involved in real estate transactions to use their
22 insurance products as part of those transactions.

23 4. In California, the title insurance market is dominated by five companies and their
24 affiliates or subsidiaries: Fidelity National Financial, Inc., First American Corporation, LandAmerica
25 Financial Group, Inc., Stewart Title Guaranty Title Company, and Old Republic National Title
26 Insurance Company. Combined, these five affiliate groups sell about 92 percent of the title insurance
27 policies sold in California – or roughly \$2.85 billion of the \$3.1 billion in title insurance premiums
28 collected from California consumers in 2004.

1 5. In some of the major markets in the United States, such as New York, these same title
2 insurers collectively meet, jointly set rates, and file these rates with the applicable state insurance
3 authority. The rates are not subject to any meaningful review or regulation, however. Moreover, the
4 companies agree to fix the price of title insurance at levels that include commissions, kick-backs and
5 other inducements paid to middlemen to steer business referrals to these companies. These agreed-
6 upon rates far exceed the risk and loss experience associated with title insurance. As a result of their
7 joint rate setting agreement, no company competes on price to the consumer.

8 6. Having agreed to fix prices in states where joint rate setting occurs, the five groups of
9 affiliated companies agreed not to compete based on price to the consumer in other states, including
10 California, where regulation of filed rates is non-existent. The result of this arrangement in California
11 is that these companies have agreed to compete by offering inducements to middlemen for business
12 referrals and thereby have fixed the rates of title insurance premiums at supra competitive levels.

13 7. These agreements and activities by five affiliate groups of title insurers, combined with
14 their market dominance in the State, have enabled these companies to maintain the price of title
15 insurance in California at artificially high levels. California regulators have acknowledged the harm
16 these agreements and this anti-competitive conduct have caused consumers during the Class Period.

17 8. In 2005, for example, the California Office of the Insurance Commissioner found an
18 “astonishing number” of kickbacks and similar inducements by title insurers to middlemen in
19 violation of state law. A report to the California Insurance Commissioner prepared that same year by
20 Birny Birnbaum, a consulting economist, also found “numerous examples in California of illegal
21 rebates and kickbacks where the title insurer or the underwritten title company provides money, free
22 services or other things of value to a real estate agent, a lender or homebuilder in exchange for
23 business referrals.” (*An Analysis of Competition in the California Title Insurance and Escrow*
24 *Industry*, December 2005, p.3) Similar findings by California Insurance Commissioner, Steve
25 Poizner, led to a February 2007 statement in which the Commissioner declared that “reasonable price
26 competition does not exist for title and escrow services” in California. (*Insurance Commissioner*
27 *Steve Poizner Issues Statement Following Decision by OAL in New Regulations, California*
28 *Department of Insurance*, February 22, 2007.)

1 9. The California Insurance Commissioner does not actively oversee or regulate rates,
2 however, and does not have the power to do so. The absence of regulation by the California Insurance
3 Commissioner has allowed collusive behavior among the five affiliate groups that dominate the
4 market, as described herein, resulting in excessive rates for title insurance premiums in California.

5 10. As a result of defendants' unlawful conduct, plaintiffs and members of the Class paid
6 higher prices for title insurance than they would have paid in a competitive market.

7 **JURISDICTION AND VENUE**

8 11. Plaintiffs bring this action to obtain injunctive relief and to recover damages, including
9 treble damages, costs of suit, and reasonable attorneys' fees arising from defendants' violations of
10 Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also bring this action under the California
11 Cartwright Act (Business and Professions Code § 16720 *et seq.*), and the California Unfair
12 Competition Law (Business and Professions Code § 17200 *et seq.*).

13 12. This Court has jurisdiction over this action pursuant to Sections 4 and 16 of the
14 Clayton Act (15 U.S.C. §§ 15 and 26) and 28 U.S.C. §§ 1331, 1332(d) and 1337(a). This Court also
15 has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

16 13. Venue is proper in this judicial district pursuant to Section 12 of the Clayton Act (15
17 U.S.C. § 22) and 28 U.S.C. § 1391(b), (c) and (d), because a substantial part of the events giving rise
18 to the plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade
19 and commerce was carried out in this District, and one or more defendants transact business, maintain
20 offices or are found in this District.

21 **PARTIES**

22 **Plaintiffs**

23 14. Plaintiffs Ruben Romero and Sarah Yahn, a married couple, are individuals residing in
24 California. During the Class Period, plaintiffs Romero and Yahn purchased title insurance in
25 California directly from one or more of the defendants and have been injured by reason of the antitrust
26 violations alleged.

1 **Defendants**

2 **A. Fidelity Family of Title Companies**

3 15. Defendant Fidelity National Financial, Inc. ("Fidelity National") is a Delaware
4 corporation headquartered at 601 Riverside Avenue, Jacksonville, Florida 32204. Fidelity National
5 does business in California through one or more of its subsidiaries, including defendants Fidelity
6 National Title Insurance Company, Tigor Title Insurance Company, Tigor Title Insurance Company of
7 Florida, National Title Insurance of New York, Inc., Security Union Title Insurance Company, and
8 Chicago Title insurance Company. Fidelity National is registered to do business in California.

9 16. Defendant Fidelity National Title insurance Company ("Fidelity Title") is a California
10 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
11 32204. Fidelity Title does business in California, is a licensed title insurance company in California,
12 and is registered to do business in California.

13 17. Defendant Tigor Title Insurance Company ("Tigor") is a California corporation with its
14 principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204. Tigor does
15 business in California, is a licensed title insurance company in California, and is registered to do
16 business in California.

17 18. Defendant Tigor Title Insurance Company of Florida ("Tigor Florida") is a Florida
18 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
19 32204. Tigor Florida does business in California, is a licensed title insurance company in California,
20 and is registered to do business in California.

21 19. Defendant Chicago Title insurance Company ("Chicago Title") is a Missouri
22 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
23 32204. Chicago Title does business in California, is a licensed title insurance company in California,
24 and is registered to do business in California.

25 20. Defendant National Title Insurance of New York, Inc. ("National Title") is a New
26 York corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville,
27 Florida 32204. National Title does business in California, is a licensed title insurance company in
28 California, and is registered to do business in California.

1 21. Defendant Security Union Title Insurance Company (“Security Union”) is a California
2 corporation with its principal place of business located at 601 Riverside Avenue, Jacksonville, Florida
3 32204. Security Union does business in California, is a licensed title insurance company in
4 California, and is registered to do business in California.

5 22. The Fidelity family of title insurance companies (collectively “Fidelity”) including
6 Fidelity National, Fidelity Title, Ticor, Ticor Florida, Chicago Title, National Title, Security Union,
7 and their affiliates, sells title insurance to purchasers of commercial and residential real estate
8 throughout the United States, including California. Nationally, Fidelity accounts for approximately 27
9 percent of title premiums. These sales amounted to approximately \$4.6 billion in 2006. Fidelity,
10 Chicago Title, and Ticor also were founding members of the New York rate-setting organization
11 known as TIRSA (discussed below), and have collectively fixed title insurance rates in the State of
12 New York under that rate setting regime since TIRSA’s inception in 1991.

13 23. Fidelity and its affiliates are wholly-owned and controlled by Fidelity National.
14 Through its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance, and
15 claims management services. During 2006, Fidelity National had revenues of approximately \$9.4
16 billion. Fidelity engaged in the conduct challenged here with the approval of Fidelity National.

17 **B. The First American Family of Title Companies**

18 24. Defendant The First American Corporation (“First American Corp.”) is a California
19 corporation with its headquarters located at 1st American Way, Santa Ana, California 92707. First
20 American does business in California through one or more of its subsidiaries, including First
21 American Title Insurance Company.

22 25. Defendant First American Title Insurance Company (“First American Title”) is a
23 California corporation with its headquarters at First American Way, Santa Ana, California 92707.
24 First American Title does business in California, is a licensed title insurance company in California,
25 and is registered to do business in California.

26 26. Defendant United General Title Insurance Company (“United General”) is a Colorado
27 corporation located at 8310 S. Valley Highway, Suite 130, Englewood, Colorado 80112. United
28

1 General does business in California, is a licensed title insurance company in California, and is
2 registered to do business in California.

3 27. The First American family of title insurance companies (collectively "First
4 American"), including defendants First American, First American Title, United General, and their
5 affiliates, sells title insurance to purchasers of commercial and residential real estate throughout the
6 United States, including California. Nationally, First American accounts for approximately 29 percent
7 of title premiums. These sales amounted to approximately \$4.8 billion in 2006.

8 28. The First American family of title insurance companies and their affiliates are wholly-
9 owned and controlled by First American Corp. Through its subsidiaries, First American is a provider
10 of title insurance, business information, and related products and services. During 2006, First
11 American had revenues of approximately \$8.5 billion. The First American family of title insurance
12 companies and their affiliates engaged in the conduct challenged here with the approval of First
13 American Corp.

14 **C. LandAmerica Family of Title Companies**

15 29. Defendant LandAmerica Financial Group, Inc. ("LandAmerica") is a Virginia
16 corporation headquartered at 5600 Cox Road, Glen Allen, Virginia 23060. LandAmerica does
17 business in California through one or more of its subsidiaries, including Commonwealth Land Title
18 Insurance Company, Lawyers Title Insurance Corporation, and Transnation Title insurance Company.

19 30. Defendant Commonwealth Land Title Insurance Company ("Commonwealth") is a
20 Pennsylvania corporation with its principal place of business located at 5600 Cox Road, Glen Allen,
21 Virginia 23060. Commonwealth does business in California, is a licensed title insurance company in
22 California, and is registered to do business in California.

23 31. Defendant Lawyers Title Insurance Corporation ("Lawyers Title") is a Nebraska
24 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.
25 Lawyers Title does business in California, is a licensed title insurance company in California, and is
26 registered to do business in California.

27 32. Defendant Transnation Title Insurance Company ("Transnation") is a Nebraska
28 corporation with its principal place of business located at 5600 Cox Road, Glen Allen, Virginia 23060.

1 Transnation does business in California, is a licensed title insurance company in California, and is
2 registered to do business in California.

3 33. The LandAmerica family of title insurance companies (collectively "LandAmerica"),
4 including defendants LandAmerica, Commonwealth, Lawyers Title, Transnation, and their affiliates,
5 is engaged in selling title insurance to purchasers of commercial and residential real estate throughout
6 the United States, including California. Nationally, LandAmerica accounts for approximately 19
7 percent of title premiums. These sales amounted to approximately \$3.15 billion in 2006.

8 34. The LandAmerica family of title insurance companies and their affiliates are wholly-
9 owned and controlled by defendant LandAmerica Financial Group, Inc. Through its subsidiaries,
10 LandAmerica is a provider of title insurance and other products and services that facilitate the
11 purchase, sale, transfer, and financing of residential and commercial real estate. During 2006,
12 LandAmerica had revenues of approximately \$4 billion. The LandAmerica family of title insurance
13 companies and their affiliates engaged in the conduct challenged here with the approval of
14 LandAmerica.

15 **D. Stewart Family of Title Companies**

16 35. Defendant Stewart Title Guaranty Company ("Stewart Guaranty") is a Texas
17 corporation headquartered at 1980 Post Oak Blvd., Suite 800, Houston, Texas 77056. Stewart
18 Guaranty does business in California, is a licensed title insurance company in California, and is
19 registered to do business in California.

20 36. Defendant Stewart Title insurance Company ("Stewart Title") is a New York
21 corporation with its principal place of business located at 300 E. 42nd Street, Floor 10, New York,
22 New York 10017. Stewart Title does business in California, is a licensed title insurance company in
23 California, and is registered to do business in California.

24 37. The Stewart family of title insurance companies (collectively "Stewart"), including
25 defendants Stewart Guaranty, Stewart Title, and their affiliates, sells title insurance to purchasers of
26 commercial and residential real estate throughout the United States and California. Nationally,
27 Stewart accounts for approximately 12 percent of title premiums. These sales amount to
28 approximately \$2 billion in 2006.

E. Old Republic Family of Title Companies

38. Old Republic National Title Insurance Company ("Old Republic") is a Delaware corporation with its principle place of business located at 400 Second Avenue South, Minneapolis, Minnesota 55401. Old Republic sells title insurance to purchasers of commercial and residential real estate throughout the United States, including California, and is a licensed title insurance company in California and is registered to do business in California. Nationally, Old Republic accounts for approximately 6 percent of title premiums that, in 2006, amount to roughly \$1 billion.

39. Old Republic and its affiliates are wholly owned and/or controlled by defendant Old Republic International Corporation ("Old Republic International"), a Delaware corporation headquartered in Chicago, Illinois. Through its subsidiaries, Old Republic International is a provider of title insurance, general insurance, mortgage guaranty insurance, and life and health insurance. Old Republic international had 2006 revenues of approximately \$3.8 billion. Old Republic engaged in the conduct alleged here with the approval of Old Republic International.

40. Together, defendants account for more than 90 percent of the market for title insurance premiums consumers pay in California. Defendants account for more than 85 percent of the national market for title insurance premiums. In 2006, those sales amounted to approximately \$14.5 billion.

AGENTS AND CO-CONSPIRATORS

41. The acts alleged against the defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees or representatives, while actively engaged in the management or operation of defendants' business or affairs.

42. Various other persons, firms or corporations not named as defendants may have participated as co-conspirators with the named defendants in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

43. Each defendant acted as the principal, agent or joint venturer of, or for, other defendants with respect to the acts, violations and common course of conduct alleged by plaintiffs.

CLASS ACTION ALLEGATIONS

44. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of the following Class:

1 All persons or entities who purchased title insurance in California
 2 directly from the defendants, their subsidiaries, agents and/or
 3 affiliates, or any co-conspirator, from the earliest date allowable by
 4 law through the present (the "Class Period").

5 Specifically excluded from this Class are the defendants; the officers,
 6 directors or employees of any defendant; any entity in which any
 7 defendant has a controlling interest; and any affiliate, legal
 8 representative, heir or assign of any defendant. Also excluded are any
 9 federal, state or local governmental entities, any judicial officer
 10 presiding over this action and the members of his/her immediate
 11 family and judicial staff, and any juror assigned to this action.

12 45. This action has been brought and may properly be maintained on behalf of the Class
 13 proposed above under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

14 46. **Numerosity.** Members of the Class are so numerous that their individual joinder is
 15 impracticable. It is estimated that the Class consists of thousands of members.

16 47. **Existence and predominance of common questions.** Common questions of law and
 17 fact exist as to all members of the Class and predominate over questions affecting only individual
 18 Class members. These common questions include:

- 19 a. Whether defendants engaged in a contract, combination or conspiracy among
 20 themselves and/or their co-conspirators to raise, fix, and maintain the prices of
 21 title insurance sold in California;
- 22 b. The identities of the co-conspirators;
- 23 c. The duration of the conspiracy and nature and character of the acts done in
 24 furtherance of the conspiracy;
- 25 d. Whether the conspiracy violated Section 1 of the Sherman Act;
- 26 e. Whether defendants actively concealed the contract, combination or conspiracy
 27 from plaintiff and other Class members;
- 28 f. Whether the conduct of defendants and their co-conspirators caused prices of
 title insurance premiums to be artificially inflated to non-competitive levels;
 and
- g. Whether plaintiffs and other members of the Class were injured by the conduct
 of defendants and their co-conspirators and, if so, the appropriate class-wide
 measure of damages and appropriate injunctive relief.

1 48. **Typicality.** Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs
2 bought title insurance from one of the defendants and, like all Class members, were damaged by the
3 wrongful conduct of defendants and their co-conspirators, and seek relief common to the Class.

4 49. **Adequacy.** Plaintiffs are adequate representatives of the Class because their interests
5 do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have
6 retained counsel competent and experienced in complex class action litigation, and intend to prosecute
7 this action vigorously. The interests of the members of the Class will be fairly and adequately
8 protected by Plaintiffs and their counsel.

9 50. **Superiority.** A class action is superior to all other available methods for the fair and
10 efficient adjudication of this controversy because joinder of all members is impracticable.
11 Furthermore, as the damages suffered by individual Class members may be relatively small, the
12 expense and burden of individual litigation makes it impossible for members of the Class to
13 individually redress the wrongs done to them. There will be no difficulty in the management of this
14 case as a class action.

15 51. In the alternative, the Class may be certified because:

- 16 a. The prosecution of separate actions by the individual members of the Class
17 would create a risk of inconsistent or varying adjudications with respect to
18 individual Class members and would establish incompatible standards of
19 conduct for defendants;
- 20 b. The prosecution of separate actions by individual Class members would create
21 a risk of adjudications with respect to them that would, as a practical matter, be
22 dispositive of the interests of other Class members not parties to the
23 adjudications, or substantially impair or impede the ability of other Class
24 members to protect their interests; and
- 25 c. Defendants have acted or refused to act on grounds generally applicable to the
26 Class, making final injunctive relief or corresponding declaratory relief with
27 respect to the members of the Class as a whole an appropriate form of relief.
28

52. Plaintiffs reserve the right to expand, modify, or alter the class definition in response to information learned during discovery.

TRADE AND COMMERCE

53. During the Class Period, defendants were the major sellers of title insurance in the United States and California. Defendants controlled in excess of 85 percent of the market for title insurance in the United States and approximately 92 percent of the statewide market in California.

54. During the Class Period, defendants sold substantial quantities of title insurance in a continuous and uninterrupted flow of interstate commerce, including through and into this judicial district.

55. During the Class Period, Class members located outside of and within California purchased commercial or residential property and title insurance within California.

56. The activities of defendants and their co-conspirators, as described here substantially affected interstate trade and commerce in the United States, and in the State of California, and caused antitrust injury in the United States and in California.

FACTUAL ALLEGATIONS

57. Defendants are competitors in the sale of title insurance to consumers throughout the United States, including California. They agreed and engaged in concerted efforts to (i) collectively set and charge supra-competitive rates for title insurance; (ii) include agency commission costs in their calculated rates; (iii) embed within these costs payoffs, kickbacks, and other charges that are unrelated to the issuance of title insurance; and (iv) hide these supposed "costs" from regulatory scrutiny by funneling them to and through title agents over which the government agencies have no ability or authority to regulate.

I. The Nature of Title Insurance

58. Title insurance differs from other, more familiar kinds of insurance. Unlike automobile and homeowner insurance policies that protect consumers from events that may occur in the future, title insurance offers protection from events that might have occurred in the past and may affect the title to the real estate that a consumer is buying.

1 59. Title insurance, therefore, protects the purchaser of a property from unidentified defects
2 in the title that would interfere with the full ownership and use of the property and the ultimate right to
3 resell the property. Possible title defects include errors or omissions in deeds, mistakes in examining
4 records, forgery, undisclosed heirs, missing heirs, liens for unpaid taxes, and liens by contractors.

5 60. There are two basic types of title insurance policies – the lender’s policy and the
6 owner’s policy. The lender’s policy is issued to the lender and will pay the lender the remaining
7 principal on the loan if there is a title problem that cannot be resolved. The owner’s policy is issued to
8 the buyer of the property for the full purchase price of the property. Consequently, the maximum
9 liability on a title insurance policy is the purchase price of the property.

10 61. In a typical home purchase, both a lender’s policy and an owner’s policy are issued.
11 Lenders require a lender’s policy whenever there is a loan associated with the real estate transaction.
12 The lender’s policy continues in force until the loan is extinguished, and the owner’s policy continues
13 until the property is sold.

14 62. With a refinancing transaction, the existing lender’s policy is terminated and a new
15 lender’s policy is issued. The existing owner’s policy remains in place. The lender does not pay for
16 the lender’s policy in a purchase or refinancing transaction. The premium may be paid by the buyer or
17 seller in a purchase transaction, and by the owner in a refinancing transaction.

18 63. Title insurers do not compete on the basis of the policies or coverage that they provide.
19 In fact, almost all title policies are based on a single set of form policies published and maintained by
20 the American Land Title Association, the title insurance industry’s national trade association.
21 Moreover, the end goal of an exhaustive title search by a title insurer is not to provide coverage for
22 title defects that the search uncovers, but rather to exclude coverage for any such defects and,
23 therefore, further reduce the real value of the title policy that is written to cover only unknown defects
24 in the title at the time of issuance. As a result, title insurance is a homogenous, commodity product.
25 There is no substantive, if any, difference between a policy offered by one company in comparison to
26 a policy offered by another company for the same property transaction.

27 64. Title insurance is one of the most costly items associated with the closing of a real
28 estate transaction, aside from the purchase price of the property. In California, rates for title insurance

1 are based on a percentage of the total value of the property being insured. For residential properties,
2 this price ranged in 2005 from about \$1,010 (for a \$250,000 property) to about \$1,490 (for a \$500,000
3 property). For more expensive homes and commercial properties, these prices are significantly
4 higher. The amount consumers spent on title insurance in California rose dramatically from
5 approximately \$700 million in 1995 to about \$3.1 billion in 2004.

6 65. Title insurance companies recognize that consumers generally lack the means to make
7 independent decisions regarding the scope, terms and price of title insurance. Title insurance referrals
8 are typically made by lawyers, mortgage brokers, lenders, realtors or other professionals who take part
9 in the transaction, and the cost of title insurance premium is presented to the consumer in the closing
10 statement at the time of closing. Typically, consumers do not shop around or negotiate the price for
11 title insurance. As a result of these dynamics, the supply and demand principles that would apply in a
12 competitive market are not implicated, and the title insurance industry is not subject to any meaningful
13 competitive constraints.

14 66. The title insurance market in California is dominated by five groups of affiliated
15 companies, that when combined, sell approximately 92 percent of the title insurance policies sold in
16 California, and that own and control the "title plants" in many California counties that every title
17 insurer must rely on to issue title policies. "Title plants" contain information regarding property
18 transfers and liens reaching back many years.

19 67. Title companies, in marked contrast to property, casualty, life, and other traditional
20 insurance carriers, choose not to market their products directly to consumers who pay for them.
21 Instead, the title insurance industry operates on what is termed a "reverse competition" model.
22 Reverse competition means that title companies solicit business referrals from the other major players
23 in the home purchase scenario – real estate agents and agencies, banks, lenders, builders, developers,
24 and others such as middlemen or go-betweens. The title companies pay middlemen for these referrals
25 in the form of direct payments, advertising expenses, junkets, parties, and other kickbacks and
26 inducements. In addition, middlemen such as Windermere, John L. Scott, and Coldwell Banker-Bain,
27 who themselves control a substantial portion of the real estate brokerage market, take significant
28 ownership stakes in local title agencies and affiliates of the major title insurers. These middlemen

1 then profit be receiving a direct monetary return from the referral of title business to the title agent in
2 which they maintain an ownership interest.

3 68. Reverse competition does not benefit consumers through market-driven forces.
4 Instead, companies spend much of their marketing budgets entertaining real estate agents, banks,
5 lenders, builders, developers, and others in an effort to convince these middlemen to steer the home-
6 buying clients to their companies for the clients' title insurance needs.

7 69. Rather than seek to capture business by offering lower prices, title insurers offer
8 kickbacks in the form of finder's fees, gifts, meals, business services, and other financial enticements.
9 As a result, title insurers compete and increase their business through higher pricing (that allows for
10 generous inducements and kickbacks) not lower pricing to consumers.

11 70. In some of the major markets in the United States, these same title insurers collectively
12 meet, jointly set rates, and file these rates with the applicable state insurance authority. The rates are
13 not subject to any meaningful review or regulation. The companies agree to fix the price of title
14 insurance far in excess of the risk and loss experience associated with such insurance. As a result of
15 the joint agreement as to rates, competition is relegated to the middleman, and therefore, no title
16 company competes on price to the consumer.

17 71. In addition to paying inducements and kickbacks, the title insurance companies and
18 their agents divide the market of real-estate middlemen through the use of Affiliated Business
19 Arrangements ("ABAs"), where the dominant real estate brokers purchase significant ownership
20 stakes in favored title insurance affiliates. The real estate brokers then reward their associates for
21 using the preferred title insurance providers and lock out independent title insurers.

22 72. Having agreed to fix prices in states where joint rate-setting occurs, the companies
23 agreed not to compete based on price to the consumer in other states, including California, where
24 regulation of filed rates is lax or non-existent. Thus, title insurance companies agree to set prices at
25 supra-competitive levels and to compete based on offering inducements to middlemen.

26 73. One example of competing based on illegal kickbacks to middlemen came to light in
27 July 2005, when nine major title companies reached an agreement with the California Department of
28 Insurance to pay \$37.8 million in refunds and penalties for illegal rebating where national

1 homebuilders, lenders, and realtors were encouraged to steer business to particular title insurers. The
2 nine companies were members of three insurance groups, all three of which are defendants here –
3 LandAmerica Financial Corporation, The First American Title Insurance Company, and Fidelity
4 National Financial, Inc.

5 74. Under the arrangement, the homebuilder formed a reinsurance company affiliate – a
6 captive reinsurer. Then, under an agreement with the title insurer, the homebuilder would steer the
7 consumer to the title insurer and the title insurer would cede a portion of the premium – typically 50%
8 after the first \$200 to \$300 – to the captive reinsurer with no substantive risk of loss associated with
9 the reinsurance transaction. In effect, the arrangement allowed for the title insurer to rebate 50% of
10 the premium to the homebuilder.

11 75. As a result of this scheme, the companies were accused of paying \$25.4 million in
12 illegal kickbacks to various lenders, builders, and realtors in exchange for the referral of title insurance
13 business. Their actions involved more than 82,000 California households that purchased or refinanced
14 a home between 1997 and 2004.

15 76. In March 2005, the U.S. Department of Housing and Urban Development (“HUD”)
16 determined that 80% or more of the premium paid by a consumer for title insurance frequently goes to
17 the local title agent or lawyer who ordered the policy and may be running the closing.

18 **II. Lack of Regulatory Supervision in California**

19 77. In California, there is a lack of regulatory authority and oversight over title insurance
20 companies. The rates in California are not set as part of deliberate state intervention, and the state
21 does not meaningfully renew or approve these rates. The rates at issue in this case went into effect
22 without review.

23 78. Although the California Office of the Insurance Commissioner (“OIC”) found an
24 “astonishing number” of kickbacks and similar inducements in violation of state law, it does not
25 actively oversee or regulate rates, and, does not, by its own admission, have the power to do so. The
26 absence of regulation in California has allowed and continues to allow collusive behavior and
27 excessive rates to flourish at the expense of the consumers.
28

1 79. In February 2007, Steve Poizner, the Insurance Commissioner of California, issued a
 2 statement concluding that “reasonable price competition does not exist for title and escrow services.”
 3 (*Insurance Commissioner Steve Poizner Issues Statement Following Decision by OAL on New*
 4 *Regulations*, California Department of Insurance, February 22, 2007.)

5 80. Poizner’s press release goes on to state that the costs of the illegal inducements that
 6 title companies lavish on intermediaries to obtain the homeowner’s business are passed on to the
 7 homeowner. Indeed, Poizner’s press release states: “As a result, over the past 10 years, even though
 8 technology has lowered the costs of title searches and document production, title and escrow charges
 9 have not come down. In fact, title insurance on the average home in California costs roughly double
 10 what it cost 10 years ago, despite the fact that [title insurance] companies’ production costs have
 11 plummeted.”

12 81. A report to the California Insurance Commissioner prepared during December 2005 by
 13 Birny Birnbaum, Consulting Economist, found abuses of the lack of regulatory supervision in this
 14 state. For instance, his report states: “We found numerous examples in California of illegal rebates
 15 and kickbacks where the title insurer or the underwritten title company provides money, free services
 16 or other things of value to a real estate agent, a lender or homebuilder in exchange for business
 17 referrals.” (*An Analysis of Competition in the California Title Insurance and Escrow Industry*,
 18 December 2005, p.3.)

19 82. The excess money paid to title agents not only works to steer business to defendants,
 20 but also serves to boost defendants’ profits through the inflated revenues they obtain to cover the
 21 agency payments, and through their ownership or management stake in many of these agencies.

22 **III. Indicators of a Lack of Competition and Conditions Conducive to Collusive Rate Setting**

23 **A. Low or Declining Title Search Costs**

24 83. The bulk of the title insurance premium goes to expenses as opposed to claim
 25 payments. Title insurers paid an average of 4.6 percent of premiums for claims and claim settlement
 26 expenses from 1995 to 2004, compared to around 80 percent of the total premium collected for
 27 property and casualty insurance. Title searches have become less labor intensive, especially in large
 28 urban counties and cities, as more of the pertinent information regarding claim of title is available

1 online. As a result, the costs of production and the risk of loss have decreased. None of these factors
2 resulted in price competition at the consumer level, however.

3 84. Despite declining costs of production, increased number of transactions and increased
4 revenue per transaction, there have been few rate changes by title insurers over the past five years.
5 During a period when costs per unit of production declined, underwritten title companies and title
6 insurers maintained excessive rates. That prices charged by title insurers and underwritten title
7 companies were not and are not responsive to the changing costs of production or increasing revenue
8 per transaction at a given set of rates is evidence of an agreement not to compete based on price.

9 **B. Title Premiums Include Improper Payments, Commissions and Inducements**

10 85. The defendant title companies provide illegal rebates and kickbacks where the title
11 insurer or the underwritten title company provides money, free services, or other things of value to a
12 real estate agent, a lender, or homebuilder in exchange for business referrals. These illegal rebates and
13 kickbacks – a consequence of reverse competition – show that title insurance rates are supra-
14 competitive.

15 **C. Market Dominance and Lack of Competition Based on Price to Consumer**

16 86. The volume of the California title insurance transactions is substantial. The number of
17 residential title transactions exceeded 3 million during 2004 alone. Commercial property transactions
18 are in addition to this volume.

19 87. The title insurance market is highly concentrated – few title insurers account for the
20 vast majority of title insurance sales – at both the statewide level and at the county level in California.
21 For example, the five defendant families controlled approximately 92 percent of the California title
22 insurance market in 2005.

23 88. Defendants have maintained their market dominance and ability to control prices for
24 title insurance in part because of the substantial barriers to entry in the market. Between 1995 and
25 2005, the number of title insurer groups declined as title insurers acquired other title insurers. Few
26 companies entered the title insurance business during the period from 2000 through 2005.

27 89. Access to title plants is a barrier to entry. Established relationships between entities
28 that steer consumers to title insurance sellers is an additional barrier to entry.

1 90. As a result of their market dominance and anti-competitive practices, defendants enjoy
2 excessive profits at the expense of the consumers. For example, title insurance underwriters earned
3 after-tax profits of 49.0 percent in 2003 and 32.3 percent in 2004.

4 **IV. Price Fixing in Other Large Markets that Affect California**

5 91. New York is one of several states in which the leading title insurers collectively fix
6 their prices through a rate-setting organization known as the Title Insurance Rate Service Association,
7 Inc., or TIRSA. TIRSA collects from defendants and TIRSA's other members revenue and cost
8 information and annually submits it in aggregate form along with collectively set title rates to the New
9 York Insurance Department. Under this rate setting regime, defendants have charged identical and
10 collectively fixed rates to consumers since TIRSA's inception in 1991.

11 92. The New York Insurance Department is charged with reviewing the title rates that
12 defendants (through TIRSA) collectively fix. Defendants have made this impossible, however, by
13 manipulating the rates so that they are principally based on costs over which the Insurance
14 Department has neither the authority nor the ability to assess.

15 93. Under TIRSA's collective rate setting regime, roughly 85 percent of the total title
16 insurance premiums are based on the so-called "costs" associated with the payment of agency
17 commissions. These costs are referred to as so-called "agency commissions." As in California, these
18 commissions chiefly include kickbacks and other costs unrelated to the issuance of title insurance.
19 Instead, as in California, these supposed costs are funneled to and through title agents to increase
20 defendants' overall business and get them more business.

21 94. New York Insurance Law does not authorize TIRSA to include kickbacks and other
22 agency commission payments that are unrelated to the issuance of title insurance in its collectively
23 fixed rates. The New York Insurance Department has acknowledged, however, that it lacks the
24 authority to review any agency commission payments and, therefore, cannot properly evaluate
25 TIRSA's calculated rates.

VIOLATIONS ALLEGED

First Claim for Relief

(Violation of Section 1 of the Sherman Act)

95. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

96. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

97. The combination and conspiracy consisted of a continuing agreement, understanding and concert of action among defendants and their co-conspirators, the substantial terms of which were:

- a. To fix, raise, maintain and stabilize the price of title insurance throughout California;
- b. To fix, raise, maintain and stabilize the terms and conditions of sale of title insurance in California; and
- c. To allocate and divide the market for title insurance in California.

98. In the absence of proper regulatory authority and oversight, defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and to allocate and divide the title insurance market in California which is a *per se* violation of Section 1 of the Sherman Act.

99. Defendants' price fixing, market allocation, and division activity has been continuous throughout the relevant damages period and has been renewed and reinforced annually through submissions to the OIC of supposed cost and revenue information and its periodic submissions of rate changes.

100. Through their collective price-fixing, market allocation and division, as well as manipulation of the regulatory process, defendants harmed competition by charging consumers supra-competitive prices for title insurance in California, evidenced by the uniformly higher prices as compared to the cost of providing the title insurance.

101. The combination and conspiracy alleged here had, among other things, the following effects:

- a. Price competition in the sale of title insurance has been restrained, suppressed, and/or eliminated;
- b. Prices for title insurance sold by defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels; and
- c. Purchasers of title insurance have been deprived of the benefits of free and open competition.

102. During the period of the antitrust violations by defendants and their co-conspirators, Plaintiffs and each member of the Class they represent purchased title insurance and, by reason of the antitrust violations alleged here, paid more for such than they would have paid in the absence of the antitrust violations. As a result, Plaintiffs and members of the Class have been injured in an amount presently undetermined.

Second Claim for Relief

(Violation of the California Cartwright Act)

103. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

104. Defendants' contract, combination, trust or conspiracy was centered in, carried out, effectuated and perfected mainly within California, and defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

105. Beginning at a time presently unknown to Plaintiffs, but at least as early as May 2004, defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Sections 16720, *et seq.* of the California Business and Professional Code. Defendants acted in violation of Sections 16720, *et seq.* to fix, raise, stabilize and maintain prices of, and allocate markets for title insurance at supra-competitive levels.

1 106. The violations of Sections 16720, *et seq.* of the California Business and Professions Code
2 consisted of a continuing unlawful trust and concert of action among the defendants and their co-
3 conspirators, the substantial terms of which were to fix, raise, maintain and stabilize the prices of, and to
4 allocate markets for title insurance in the state of California.

5 107. For the purpose of forming and effectuating the unlawful agreement, defendants and their
6 co-conspirators did those things which they combined and conspired to do, including the acts, practices
7 and course of conduct alleged above and the following:

- 8 a. To fix, raise, maintain and stabilize the price of title insurance;
9 b. To allocate markets for title insurance amongst themselves; and
10 c. To allocate and divide the market for title insurance in California.

11 108. The combination and conspiracy alleged here had the following effects:

- 12 a. Price competition in the sale of title insurance has been restrained,
13 suppressed and/or eliminated in California and throughout the
14 United States;
15 b. Price for title insurance sold by defendants and their co-
16 conspirators have been fixed, raised, maintained and stabilized at
17 artificially high, non-competitive levels in California and
18 throughout the United States; and
19 c. Those who purchased title insurance from defendants and their co-
20 conspirators have been deprived of the benefit of free and open
21 competition.
22

23 109. Plaintiffs and the other members of the Class paid supra-competitive, artificially inflated
24 prices for title insurance.

25 110. As a direct and proximate result of defendants' unlawful conduct, Plaintiff and the
26 members of the Class have been injured in their business and property because they paid more for title
27 insurance than they otherwise would have paid in the absence of defendants' unlawful conduct.
28

111. As a result of defendants' violation of Sections 16720, *et seq.* of the California Business and Professions Code, Plaintiffs seek treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and Professions Code.

Third Claim for Relief

(Violation of the California Unfair Competition Law)

112. Plaintiffs incorporate and reallege each and every allegation in the preceding paragraphs of this complaint.

113. Defendants' business acts and practices were centered in, carried out, effectuated and perfected mainly within California, and defendant's conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

114. During the Class Period, and continuing to the present, defendants committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

115. This Claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from defendants for acts that violated Sections 17200, *et seq.* of the California Business and Professions Code, commonly known as the Unfair Competition Law.

116. Defendants' conduct violated Section 17200. The acts, omissions, misrepresentations, practices and non-disclosures by defendants constituted a common continuous and continuing course of conduct of unfair competition by means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Sections 17200, *et seq.*, including the following:

- a. Defendants' acts and practices violate Section 1 of the Sherman Act and Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;
- b. Defendants' acts and practices are unfair to consumers of title insurance in California and throughout the United States within the

1 meaning of Section 17200 of the California Business and
2 Professions Code; and

3 c. Defendants' acts and practices are fraudulent or deceptive within
4 the meaning of Section 17200 of the California Business and
5 Professions Code.

6 117. Plaintiffs and each of the Class members are entitled to full restitution and/or
7 disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained
8 by defendants as a result of their illegal business acts or practices as alleged here.

9 118. The illegal conduct alleged here is continuing and there is no indication that defendants
10 will not continue such activity into the future.

11 119. The unlawful and unfair business practices of defendants, as described above, caused
12 Plaintiffs and the members of the Class to pay supra-competitive and artificially-inflated prices for title
13 insurance. Plaintiffs and the members of the Class suffered injury in fact and lost money or property as
14 a result.

15 120. Plaintiffs request that this Court enter such order or judgment as may be necessary to
16 enjoin defendants from continuing their unfair, unlawful, and/or deceptive practices, to restore to them
17 and the Class members any money that may have been unjustly acquired by defendants by means of
18 defendants' unfair competition.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs and the members of the Class pray for relief as follows:

22 A. That this action be certified and maintained as a class action under Rule 23(a) and
23 (b)(3) of the Federal Rules of Civil Procedure;

24 B. That the unlawful conduct, contract, conspiracy or combination alleged here be
25 adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of
26 the Sherman Act;

1 C. That Plaintiffs and the Class recover damages, including treble damages, and
2 restitution, as provided by federal and state antitrust and unfair competition laws, and that a joint and
3 several judgment in favor of Plaintiffs and the Class be entered against the defendants;

4 D. That defendants, their affiliates, successors, transferees, assignees, and the officers,
5 directors, partners, agents, employees, and all other persons acting or claiming to act on their behalf,
6 be permanently enjoined and restrained from in any manner: (1) continuing, maintaining, or renewing
7 the conduct, contract, conspiracy or combination alleged here; (2) entering into any other conspiracy
8 similar to the ones alleged here; (3) entering into any other contract, conspiracy or combination having
9 similar purpose or effect; and (4) adopting or following any practice, plan, program, or device having
10 a similar purpose or effect;

11 E. That Plaintiffs and the Class be awarded pre-and post-judgment interest, and that the
12 interest be awarded at the highest legal rate from and after the date of service of the initial complaint
13 in this action;

14 F. That Plaintiffs and the Class recover their costs of this suit, including reasonable
15 attorneys' fees as provided by law; and

16 G. That Plaintiffs and the Class have such other, further and different relief as the case
17 may require and the Court may deem just and proper under the circumstances.

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JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

DATED: July 14, 2008

Respectfully submitted,

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